

# HOUSE BILL No. 1116

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 33-43-5.

**Synopsis:** Rights of consumers of legal services. Prohibits an attorney from communicating with a claimant concerning a legal action involving wrongful death or personal injury: (1) for at least 45 days after the wrongful death or personal injury occurs; or (2) until the claimant contacts the attorney; whichever occurs first. Requires an attorney retained by a claimant on a contingent fee basis to bring an action concerning wrongful death, personal injury, or damage to or loss of property to provide the claimant with certain information: (1) before the action is brought; (2) while the action is pending; and (3) after the action is settled or adjudicated. Allows a claimant to request an objective review of a contingent fee by a state or local bar association or another attorney to determine if the fee is reasonable and fair.

**Effective:** July 1, 2006.

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**Wolkins**

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January 5, 2006, read first time and referred to Committee on Judiciary.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

## HOUSE BILL No. 1116

A BILL FOR AN ACT to amend the Indiana Code concerning courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 33-43-5 IS ADDED TO THE INDIANA CODE AS  
2       A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3       1, 2006]:

4       **Chapter 5. Rights of Consumers of Legal Services**

5       **Sec. 1. As used in this chapter, "attorney" means a person**  
6       **authorized to practice law in Indiana.**

7       **Sec. 2. (a) As used in this chapter, "attorney's services" means:**

- 8               (1) the professional advice or counseling of an attorney; or  
9               (2) legal representation by an attorney.

10       **(b) The term does not include other assistance or expenses**  
11       **incurred directly or indirectly in connection with an attorney's**  
12       **services, including the following:**

- 13               (1) Administrative or secretarial assistance.  
14               (2) Travel expenses.  
15               (3) Witness fees.  
16               (4) The preparation of a study, an analysis, a report, or a test  
17       **by a person other than the attorney.**



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1       **Sec. 3. As used in this chapter, "claim" means a civil action**  
 2       **brought in a court in Indiana for:**

- 3           (1) wrongful death;  
 4           (2) personal injury; or  
 5           (3) damage to or loss of property.

6       **Sec. 4. (a) As used in this chapter, "claimant" means an**  
 7       **individual who brings a claim.**

8       **(b) The term includes the following:**

- 9           (1) A claimant's personal representative, if a claim is brought  
 10          on behalf of the claimant's estate.  
 11          (2) A claimant's parent, guardian, or personal representative,  
 12          if a claim is brought on behalf of:

13           (A) a minor; or

14           (B) an adult who is mentally incompetent.

15       **Sec. 5. As used in this chapter, "contingent fee" means the cost**  
 16       **of an attorney's services as determined by applying a:**

- 17           (1) specified percentage; or  
 18           (2) graduated or sliding percentage;

19       **to the amount of a settlement or judgment obtained in a claim.**

20       **Sec. 6. As used in this chapter, "initial meeting" means the first**  
 21       **conference or discussion between a claimant and an attorney,**  
 22       **whether conducted by telephone, by electronic means, or in person,**  
 23       **concerning the details, facts, or basis of a claim.**

24       **Sec. 7. As used in this chapter, "retain" means an act of a**  
 25       **claimant to engage an attorney's services by seeking and obtaining**  
 26       **the attorney's services by express or implied agreement.**

27       **Sec. 8. (a) Except as provided in subsection (b), an attorney may**  
 28       **not communicate with a claimant concerning a claim involving**  
 29       **wrongful death or personal injury:**

- 30           (1) for at least forty-five (45) days after the date the wrongful  
 31          death or personal injury occurs; or  
 32           (2) until the claimant contacts the attorney;

33       **whichever occurs first.**

34       **(b) A representative of an insurance company may**  
 35       **communicate with a claimant at any time to investigate a claim**  
 36       **that involves the insurance company.**

37       **Sec. 9. At the initial meeting between:**

- 38           (1) a claimant; and  
 39           (2) an attorney who is retained by the claimant on a  
 40          contingent fee basis;

41       **the attorney shall disclose to the claimant the claimant's rights as**  
 42       **described in sections 10 through 14 of this chapter.**

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1       **Sec. 10. An attorney retained by a claimant on a contingent fee**  
 2 **basis shall, not more than thirty (30) days after the date of the**  
 3 **initial meeting, disclose the following in a written statement**  
 4 **submitted to the claimant:**

5       **(1) The estimated number of hours of the attorney's services**  
 6 **that will be spent handling the claim through a settlement or**  
 7 **trial.**

8       **(2) The attorney's contingent fee for services regarding the**  
 9 **claim and any conditions, limitations, restrictions, or other**  
 10 **qualifications on the contingent fee.**

11       **(3) The costs or expenses in addition to the contingent fee that**  
 12 **the claimant will be required to pay.**

13       **(4) All other fee agreements to be made concerning the claim,**  
 14 **including:**

15       **(A) the amount to be paid to any co-counsel associated with**  
 16 **the case; and**

17       **(B) any agreement to refer the claimant to another**  
 18 **attorney.**

19       **Sec. 11. An attorney retained by a claimant on a contingent fee**  
 20 **basis shall do the following:**

21       **(1) Keep accurate records of the time the attorney spends on**  
 22 **the claimant's case.**

23       **(2) While the claim is pending, provide a written monthly**  
 24 **report to the claimant that includes the following:**

25       **(A) The amount of time the attorney spent working on the**  
 26 **case.**

27       **(B) The type of work performed.**

28       **(C) The progress of the case.**

29       **Sec. 12. A claimant may request an objective review of a**  
 30 **contingent fee agreement by a state or local bar association or**  
 31 **another attorney to determine if the fee agreement is reasonable**  
 32 **and fair based on factors that include:**

33       **(1) whether liability is being contested;**

34       **(2) whether the amount of damages is clear; and**

35       **(3) the amount of time the attorney reasonably spent on the**  
 36 **case.**

37       **Sec. 13. Not more than thirty (30) days after the date a claim is**  
 38 **settled or adjudicated, an attorney retained by a claimant on a**  
 39 **contingent fee basis shall disclose the following in a written**  
 40 **statement submitted to the claimant:**

41       **(1) The number of hours of the attorney's services that were**  
 42 **spent in connection with the claim.**

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(2) The total amount of the contingent fee for the attorney's services performed in connection with the claim.

(3) The fee per hour of the attorney's services performed in connection with the claim as determined by dividing the total amount of the contingent fee by the number of hours of the attorney's services that were spent in connection with the claim.

(4) The claimant's right to request an objective review of the contingent fee by a state or local bar association or another attorney to determine if the fee is reasonable and fair in the circumstances.

Sec. 14. (a) If an attorney fails to disclose information to a claimant as required by this chapter, the claimant may bring a civil action against the attorney to recover appropriate actual or compensatory damages.

(b) In addition to actual or compensatory damages under subsection (a), if an attorney intentionally fails to disclose information to a claimant as required by this chapter, the claimant may also be awarded exemplary damages.

Sec. 15. (a) The provisions of this chapter are in addition to and not in place of any other remedies or penalties available to a claimant by law.

(b) This chapter may not be construed to abrogate supreme court rules concerning the regulation of:

(1) the practice of law; or

(2) contingent fee agreements.

If a provision of this chapter conflicts with a supreme court rule, the supreme court rule controls.

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